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No. 87-1573

In The  
**Supreme Court of the United States**  
October Term, 1987

WILLIE B. KILGORE, DORIS McCONNELL  
and PATSY BURCHETT,  
*Cross-Petitioners,*

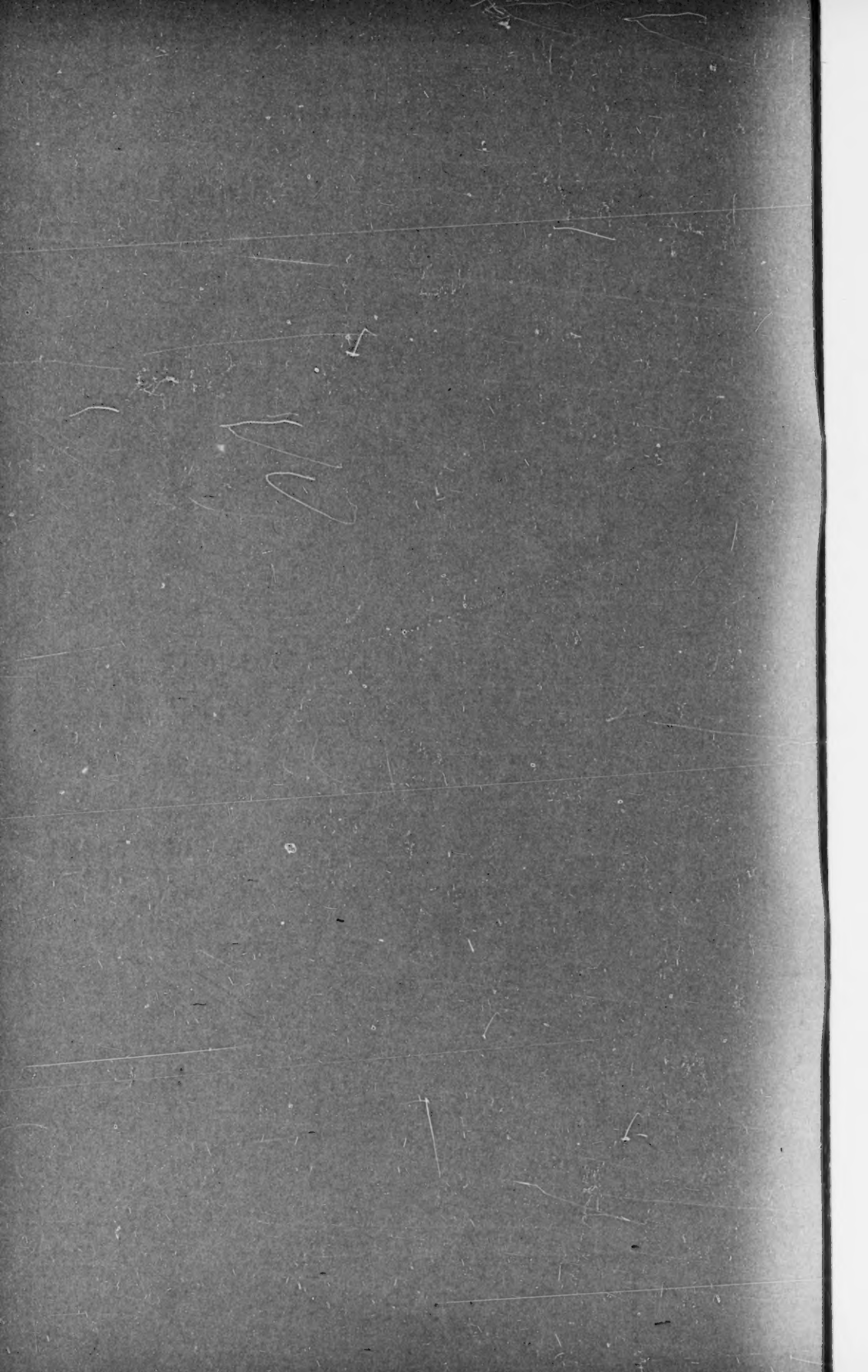
v.

COMMONWEALTH OF VIRGINIA, *ex rel.*  
STATE BOARD OF ELECTIONS,  
KATHERINE JONES McCLELLAND,  
FAYE OWENS, ROGER ADAMS, EVELYN BACON,  
PHILLIP CHEEK, the COUNTY OF LEE,  
VIRGINIA, the COUNTY OF SCOTT, VIRGINIA,  
the REPUBLIC INSURANCE COMPANY and the  
COMPASS INSURANCE COMPANY,  
*Cross-Respondents.*

**ON WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**BRIEF IN OPPOSITION OF ROGER ADAMS,  
EVELYN BACON, PHILLIP CHEEK and  
COUNTY OF LEE, VIRGINIA TO THE  
CROSS-PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT FILED  
HEREIN BY WILLIE B. KILGORE, DORIS  
McCONNELL and PATSY BURCHETT**

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## QUESTIONS PRESENTED

Where the critical day-to-day regulation and control of the conduct of a rural county electoral board and registrar's office lies with the state and not the county, are the electoral board members and the general registrar state or are they county employees?

When the state legislatively predetermines and actively directs the conduct of its electoral board and general registrar in a small rural county and steadfastly asserts that the appointment procedure of that same electoral board and general registrar is fully legal and falls squarely within the political affiliation exception to *Branti/Elrod*, can the individual electoral board members' and general registrar's conduct be defined as malicious or negligent disregard of clearly-established constitutional rights?

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Cross-respondents, Roger Adams, Evelyn Bacon, Philip Cheek and the County of Lee, Virginia, do not think a writ of certiorari should be granted. This brief in opposition is filed pursuant to Supreme Court Rule 22. The

cross-petition was received by Adams, Bacon, Cheek and the County of Lee, on March 21, 1988.

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### **REFERENCE TO OPINIONS**

Cross-respondents, Roger Adams, Evelyn Bacon, Philip Cheek and the County of Lee, Virginia refer this Court to the same opinions and orders designated on page 2 of the Commonwealth of Virginia's original petition in case no. 87-1424.

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### **JURISDICTION**

The order of the court of appeals denying cross-petitioners' petition for rehearing and suggestion for rehearing en banc was entered on November 19, 1987. (Petition of Commonwealth of Virginia, A-25). This Court may take jurisdiction pursuant to 28 U.S.C. § 1254(1).

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### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

Pertinent constitutional provisions and state statutes at issue here are reproduced as Appendix D at A-70 of the appendix to the original petition filed in case no. 87-1424 by the Commonwealth of Virginia, as Appendix A-13 to cross-petitioners' brief and as Appendix A-1 to the



Adams, Bacon, Cheek and Lee County brief in opposition in case no. 87-1424. There is in addition Code of Va. §§ 24.1-23, -31, and -34 reproduced as Appendix A at page A-1 of the appendix of this brief in opposition.

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### **STATEMENT OF THE CASE**

A Judge of the Thirtieth Judicial Circuit of the Commonwealth of Virginia appointed Evelyn Bacon to the Lee County Electoral Board in October 1981 and on February 28, 1983, appointed Roger Adams to his position on the Lee County Electoral Board. A democrat won the Governor's race in November 1982, and consequently, by operation of Virginia law, the majority of the members of the Lee County Electoral Board for the term beginning March 1, 1983, were democrats. Va. Code § 24.1-29. Susan Fitz-Hugh, Secretary of the State Board of Elections, in February 1983, instructed Evelyn Bacon, member and secretary of the Lee County Electoral Board, to meet and appoint a Lee County General Registrar during the week of March 1, 1983. The Lee County Electoral Board met during the week of March 1, 1983 and appointed Phillip Cheek as Registrar for Lee County. Roger Adams and Evelyn Bacon, the two democrats on the Board, cast their votes in favor of appointing Phillip Cheek. Judy Carol Williams, the republican member of the Board, thought being given notice, did not appear at the meeting. When two people claimed to be the new registrar, Susan Fitz-Hugh, Secretary of the State Board of Elections, immediately instituted and proceeded to conclusion a suit in Scott

County and a suit in Lee County to determine the correct appointment.

After the appointment of Phillip Cheek as Lee County General Registrar, but before the date Phillip Cheek took office (April 1, 1983) Susan Fitz-Hugh of the State Board of Elections directed Lee County Electoral Board member Evelyn Bacon to personally request incumbent Lee County General Registrar Doris McConnell to train Phillip Cheek. Doris McConnell refused to do this.

Again under specific instructions from Susan Fitz-Hugh, Secretary of the Commonwealth of Virginia State Board of Elections, Lee County Electoral Board Member Evelyn Bacon along with local law enforcement officials and in-coming General Registrar Phillip Cheek removed a window and entered into the office of the Lee County General Registrar at midnight of March 31, 1986, to secure the Lee County Registrar's Office for the in-coming General Registrar, Phillip Cheek. Incumbent Registrar Doris McConnell considered that she still held the office and would not relinquish the keys.

The State Board of Elections through its Secretary, Susan Fitz-Hugh, gave any instructions that were given to the Lee County Electoral Board.

The legislature in Richmond and not the Lee County Board of Supervisors determines, pays and regulates the compensation of the Lee County Electoral Board members of the Lee County General Registrar. Although the pay-checks come from Lee County, the Commonwealth of Virginia completely reimburses the amounts paid. Lee County must provide office space and some supplies (though not forms) as well as some fringe benefits.

Prior to taking office on April 1, 1983, in-coming General Registrar Phillip Cheek talked with Susan Fitz-Hugh, Secretary of the State Board of Elections, about his new job. He inquired about Patsy Burchett. Susan Fitz-Hugh told Cheek that he could appoint whom he wanted; that Patsy Burchett's term was the same as incumbent Registrar Doris McConnell's and thus ended with Doris McConnell's term on March 31, 1983.

The State Board of Elections in Richmond, Virginia actively controlled and still controls the daily activities of the Lee County General Registrar and Assistant General Registrar. All materials used at the polls and almost all the materials used in the Registrar's Office come from the State Board of Elections' Office in Richmond. The form of the ballot comes from Richmond. Precinct rosters, the central roster system, the master voter roster, and the voter list all are created and produced in Richmond. If there are any irregularities in the operation of the office of General Registrar, they are to be reported to the State Board of Elections and the local Board. In the cases at hand, any irregularities were reported to Susan Fitz-Hugh or the State Board of Elections. The computer is in Richmond. The role of the local Registrar is to check the accuracy of the computer printouts, but the State Board of Elections' computer in Richmond automatically and exclusively performs the annual voter purge. The General Registrar reports often and regularly to Richmond but only on the mail dates set by Richmond. Whenever the

General Registrar or the Assistant General Registrar has a problem, he or she calls Richmond, the State Board of Elections. All the daily duties of the General Registrar and the Assistant General Registrar are spelled out in the Registrar's Handbook, which the Secretary of the State Board of Elections has prepared. It is that handbook "that you go by for everything you do in the Registrar's Office." All duties are spelled out. There is to be no variance. The officials of the State Board of Elections train the county's General Registrar and Assistant General Registrar. The State Board of Elections sets the hours of operation. Between the law, which sets forth the duties of the General Registrar and the Assistant General Registrar, and the handbook, which sets out the everyday tasks, there is no room for discretion and the General Registrar and the Assistant General Registrar make no policy decisions. Lee County General Registrar Phillip got 100% of his instructions from Richmond.

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### **REASONS FOR DENYING CROSS-PETITIONERS' WRIT**

The cross-petition for certiorari should not be granted. The Fourth Circuit in this case is correct on the issues of Eleventh Amendment immunity, qualified immunity and status as state employees. Adams, Bacon, Cheek and the County of Lee in this brief in opposition shall respond only to the issues of qualified immunity and employee status.

## I.

**WHERE THE CRITICAL DAY-TO-DAY  
REGULATION AND CONTROL OF THE CONDUCT  
OF A RURAL COUNTY ELECTORAL BOARD AND  
REGISTRAR'S OFFICE LIES WITH THE STATE  
AND NOT THE COUNTY, THE ELECTORAL  
BOARD MEMBERS AND THE GENERAL  
REGISTRAR ARE STATE AND NOT  
COUNTY EMPLOYEES.**

## A.

**It Is The General Assembly Of The Commonwealth  
Of Virginia And Not The Board Of Supervisors  
Of Lee County That Has Actively And Consistently  
Implemented A Pre-Programed Partisan Statutory  
Scheme Of General Registrar And Assistant  
General Registrar Appointments.**

Only the State Board of Elections, not the Lee or Scott County Board of Supervisors of the Lee or Scott County Electoral Board, is authorized by statute to make rules and regulations, to remove a member of the local Electoral Board, or to file either a writ of mandamus or a writ of prohibition. Under Va. Code § 24.1-19.

The State Board of Elections shall so supervise and coordinate the work of the county and city electoral boards and of the registrars as to obtain uniformity in their practices and proceedings and legality and purity in all elections. It shall make such rules and regulations not inconsistent with law as will be conducive to the proper functioning of such electoral boards and registrars. It may institute proceedings for the removal of any member of an electoral board or other election official who fails to discharge the duties of his office in accordance with law. The Board may remove from office any registrar upon notice, who fails to discharge the duties of his office according to law. . . .

The Virginia legislature has not only given the State Board of Elections the power to direct and supervise Virginia elections but also has mandated a central record-keeping system in Richmond. Va. Code § 24.1-23.

The legislative scheme is clear: Policy, procedure, rules, regulations, supervision, enforcement, discipline and records are all under the direct supervision of the State Board of Elections dominated by members of the party who won the last governor's race.

How and who to make the registrar appointments was first predetermined by a uniform constitutional and legislative scheme and second was personally directed by the Secretary of the State Board of Elections Susan Fitz-Hugh. She personally advised when the appointments would take place, how to physically secure the office for Phillip Cheek, whether Phillip Cheek had to keep incumbent Assistant Registrar Patsy Burchett, and she instituted proceedings in Circuit Court to determine the actual Registrar of Lee and of Scott Counties. This hand-on direction and implementation of a predetermined patronage oriented statutory scheme is totally directed from Richmond, Virginia and not the county seat of Lee or Scott Counties four hundred (400) miles to the west.

## **B.**

### **The "Moving Force" Was Clearly The Legislature And The State Board Of Elections.**

When fairly and objectively viewed, it is obvious that the public entity which was the "moving force," *Kentucky v. Graham*, 473 U.S. 159, 87 L.Ed.2d 114, 105 S.Ct. 3099 (1985), behind any unconstitutional deprivation of plaintiffs' rights was neither Scott nor Lee County, but the

Commonwealth of Virginia through its General Assembly and its State Board of Elections. No matter how the citizens of these localities would vote in any election, the political composition of the local electoral board which in turn appoints the general registrar (who in turn appoints the assistant registrar) is determined by the statewide outcome of the gubernatorial election; not by the vote in Lee or Scott County. Va. Code § 24.1-29. Therefore, no matter what the local electorate did and no matter what a local governing body could do, an unconstitutional deprivation would arise because of the State statutory scheme. The citizens of Lee and Scott County whether through the ballot box or through their governing body could not have prevented the injury. It is wrong to hold them accountable for its infliction.

### C.

**Neither The County's Governing Body Nor Its Electorate  
Has Any Say In Appointing, Supervising Or Controlling  
Electoral Board Members, Registrars, or  
Assistant Registrars.**

As is readily seen in examining the Virginia Constitution and statutes, a locality has absolutely no expressly granted or necessarily implied authority to influence, persuade or control either the State's circuit court judge in appointing the electoral board, or the electoral board in appointing, removing or discharging the general registrar, or the general registrar in appointing or removing an as-

sistant registrar. Va. Code § 24.1-29, and -32. Furthermore in all matters of personnel such as selection and appointment, setting of qualifications, determination of amount of salary or compensation, and the removal or discharge of the electoral board members and the general registrar, the locality also has no control or influence—all these matters are reserved to the General Assembly and the State Board of Elections. Va. Code § 24.1-19, -29, -31, -32, -34, and -43: *McConnell v. Adams*, 829 F.2d 1319, 1326-28 (4th Cir. 1987). It is true that the assistant general registrar is paid by the county unreimbursed by the Commonwealth. Apart from pay, however, all rules, regulations, daily advice, control and supervision is from either the State Board of Elections or the general registrar.

The cross-petitioners recognized this pervasive State control in their complaints which initiated this litigation. The complaints alleged a deprivation under color of the law and of the customs and usages of the State of Virginia—not under the law and policy of the locality. *See*, Count I, Paragraphs 7 and 8 (Kilgore and McConnell complaints) and Count I, Paragraphs 10 and 11 (Burchett complaint).

Moreover, cross-petitioners Kilgore and McConnell pointed out in their district court briefs in support of motions for reinstatement to the job of general registrar, filed July 23, 1985, at page 4:



. . . The control by the State Electoral Board points to one conclusion—a registrar serves the State and not a particular county electoral Board.

#### **D.**

##### **He Who Makes Should Bear The Burden.**

If, as the jury in these cases found, the sole motivation for the appointments was political party affiliation (patronage), then the individuals who made those appointments were simply carrying out clearly intended state constitutional, legislative and executive patronage policies. It was the decision makers in the legislative and executive branches in Richmond who had the final authority to perpetuate patronage in the appointment of the registrars or to curtail patronage appointments in those offices. The legislative and the executive branch in Richmond decided to perpetuate and fortify the role of patronage in the appointments of electoral board members, registrars and assistant registrars. It is logical, lawful and ultimately fair that the legislative and executive branches of the government of the Commonwealth of Virginia, and not the Electoral Board members and general registrars of Lee and Scott Counties, Virginia should bear full responsibility for the allegedly improper patronage appointments which allegedly occurred.

## II.

**WHEN THE STATE LEGISLATIVELY  
 PREDETERMINES, AND ACTIVELY DIRECTS THE  
 CONDUCT OF ITS ELECTORAL BOARD AND  
 GENERAL REGISTRAR IN A SMALL RURAL  
 COUNTY AND STEADFASTLY ASSERTS THAT  
 THE APPOINTMENT PROCEDURE OF THAT  
 SAME ELECTORAL BOARD AND GENERAL  
 REGISTRAR IS FULLY LEGAL AND FALLS  
 SQUARELY WITHIN THE POLITICAL  
 AFFILIATION EXCEPTION TO BRANTI/ELROD,  
 THE INDIVIDUAL ELECTORAL BOARD MEMBERS'  
 AND GENERAL REGISTRAR'S CONDUCT  
 CANNOT BE DEFINED AS MALICIOUS OR  
 NEGLIGENT DISREGARD OF CLEARLY-  
 ESTABLISHED CONSTITUTIONAL RIGHTS**

## A.

**Lee County Electoral Board Members And The General  
 Registrar Followed The Instructions Of Their Employer  
 On The Proper And Legal Way To Make Their  
 Appointments**

Bacon, Adams and Cheek acted in utmost good faith. They had no reason to know that their appointments violated clearly established constitutional rights. Secretary of the Commonwealth of Virginia State Board of Elections, Susan Fitz-Hugh, personally instructed them on the legal propriety of the appointments. After the appointments the same Secretary of the Commonwealth of Virginia Board of Elections immediately brought declaratory judgment actions in Lee and Scott Counties, Virginia to insure the propriety of the general registrar appointments. The Secretary of the Commonwealth of Virginia Board of Elections and the Commonwealth itself have steadfastly asserted in the district Court, the Fourth Circuit and

now here in this Court, wherein it is petitioner (Case No. 87-1424), "that political considerations play a necessary role in the employment of general registrars in Southwest Virginia (Petition in case no. 87-1424 at page 8)<sup>1</sup>

When the individual defendants in these cases simply acted in furtherance of a long entrenched constitutionally and legislatively created patronage system, then the responsibility for following that scheme should fall on the shoulders of the Commonwealth of Virginia "rather than the several agents who were trying to perform their job." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 89 L.Ed.2d 452, 470, 106 S. Ct. — (1986). The General Assembly of the Commonwealth of Virginia has expressly accepted this responsibility. Prior to 1986 the General Assembly accepted the responsibility because it set in motion the patronage oriented statutory scheme. In 1986 it enacted Va. Code § 2.1-526.8(E) establishing a state public officials' liability insurance plan which specifically provides coverage for electoral board members and registrars "for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization. . . ."

The Fourth Circuit has ruled that Bacon, Adams and Cheek are in this set of facts entitled to qualified immunity

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<sup>1</sup>As phrased in the September 30, 1986 joint brief of appellants in the Fourth Circuit, the Commonwealth of Virginia asserts:

Even if the personnel actions below were considered *Elrod/Branti* patronage discharges, there is a sufficient public interest justification because the Virginia General Assembly has made a legislative determination that political affiliation is essential to the effectiveness of the general registrar and her assistants. (Joint brief of appellants at page 36.)

(829 F.2d 1319, 1325). Not only did defendants, Bacon, Adams and Check act upon and in accordance with the counsel given by the Commonwealth of Virginia State Board of Elections but “(r)oughly contemporaneous with these actions, other courts . . . recognized a small office exception to *Elrod/Branti*.” *Id.* at 1325. Finally, the record will show that Check conferred with legal counsel in the process of deciding not to appoint Patsy Burchett.

## B.

### Cross-Petitioners Suggest Cases Which Do Not Support Their Contentions.

The cases discussed by cross-petitioners on pages 22 through 26 of their brief lead to no other conclusion on qualified immunity than that handed down by the Fourth Circuit. *Brady v. Paterson*, 515 F.Supp. 695 (N.D.N.Y. 1981), *DeLong v. United States*, 621 F.2d 619 (4th Cir. 1980), *Ness v. Marshall*, 660 F.2d 517 (3rd Cir. 1981) and *Visser v. Magnarelli*, 530 F.Supp. 1165 (N.D.N.Y. 1982) are all inapposite. The courts in these cases never got to the issue of qualified immunity.

*Gibbons v. Bond*, 523 F.Supp. 843 (W.D. Mo. 1981) and *Nekolny v. Painter*, 653 F.2d 1164 (7th Cir. 1981) are “qualified immunity” cases but they do not make out the cross-petitioners’ case. In *Gibbons* the Court granted “qualified immunity” and emphasized the difficulty involved:

“ . . . [t]he determination of whether a particular position in state government is protected by the First Amendment presents a difficult factual question.” *Id.* at 854.

In *Nekolny* a republican supervisor discharges three New York township employees because they had actively and *vocally* campaigned against her. *Nekolny* was denied a qualified immunity defense. There was in *Nekolny* no evidence that the supervisor's conduct was directed, condoned and vigorously defended in state and federal courts by her employer as strictly complying with established constitutional law. Nor was there in *Nekolny* a contention of the continued viability of the small office exception to *Branti/Elrod*.

### C.

#### **Adams, Bacon And Cheek Continue Resolute That Their Appointments Were Made With The Correct Motivation**

Finally, and really to Adams, Bacon and Cheek most importantly, even though the evidence did not convince the trial court jury, the record is full of evidence that their major if not sole motivation in making the respective registrar and assistant registrar appointments was the conviction that neither Doris McConnell nor her close friend and associate Patsy Burchett were able or willing to do a competent job as their appointee.



### **CONCLUSION**

Bacon, Adams and Cheek tried to be responsible public servants. Their jobs were defined, regulated and actively controlled by the Secretary of the State Board of Elections of the Commonwealth of Virginia. The Secretary actively advised Bacon, Adams and Cheek what to do

in the appointment process of cross-petitioners Doris McConnell and Patsy Burchett. The Secretary followed up the appointments with two actions in state court, two actions in federal district court, a consolidated case in the Fourth Circuit and an original petition in this Court to ratify and perpetuate both the system by which and the manner in which Bacon, Adams and Cheek made the general registrar and the assistant general registrar appointments.

The Fourth Circuit carefully and correctly decided these cases. It is time Adams, Bacon and Cheek, who long ago resigned from this kind of public service because of this kind of litigation, be released from the burden of this case, a burden the Commonwealth of Virginia wants and alone should bear.

Respectfully submitted,

ROGER ADAMS,  
EVELYN BACON,  
PHILLIP CHEEK  
and  
COUNTY OF LEE, VIRGINIA

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**APPENDIX**

Article 2

*Central Registration Roster*

§ 24.1-23. Establishment; duties of State Board of Elections.—The State Board of Elections shall provide for the establishment, operation and maintenance of a central record-keeping system on or before October 1, 1973, for all voters registered in the Commonwealth.

In order to establish, operate and maintain such system, it shall be the duty of the State Board of Elections to:

(1) Maintain a complete central registration roster of all qualified voters in the Commonwealth by county or city, as the case may be, and by precincts within such county or city.

(2) Delete from the central registration roster the name of any voter (a) who is deceased, (b) who is no longer qualified to vote in the election district where registered due to removal of his residence, (c) who has been convicted of a disqualifying crime, or (d) who is otherwise no longer qualified to vote as may be provided by law.

(3) Enter names of qualified voters on the central registration roster as they are reported by the general registrars.

(4) At least ten days prior to a general or primary election and three days prior to a special election, provide to each general registrar a list of all registered voters in the county or city, together with an alphabetical list of all registered voters in each precinct of such county, city or town, which precinct lists shall be used as the official

lists of qualified voters and constitute the precinct registration books.

(5) Retain for four years from date of receipt all information furnished to the Board relating to the inclusion or deletion of names from the master roster.

(6) Acquire by purchase, or lease, or contract for the use of such equipment as is required to execute the duties of the Board properly.

(7) Utilize any source of information which may assist in carrying out the purposes of this section.

(8) Furnish, at a reasonable price, precinct lists for their districts to courts of the Commonwealth and the United States for jury selection purposes, to candidates for election or political party nomination to further their candidacy, political party committees or officials thereof for political purposes only, incumbent officeholders to report to their constituents, nonprofit organizations which promote voter participation and registration for that purpose only; and for no other purpose and to no one else. In addition, any general registrar whose records of registered voters are automated may furnish such lists to courts of the Commonwealth and the United States for jury selection purposes. Precinct lists shall be by printout or by magnetic tape to be used on computer equipment as may be requested.

Any person receiving such precinct lists shall take and subscribe to the following oath:

"I understand that the lists requested are the property of the State Board of Elections of the Commonwealth of Virginia (or name of appropriate county or city) and



I hereby affirm that I am a person authorized by § 24.1-23 of the Code of Virginia to receive a copy of the precinct lists described; and I further affirm that the lists will be used only for the purposes prescribed and for no other use, and that I will not permit the use or copying of such lists by persons not authorized by the Code of Virginia to obtain them."

(Seal) Signature of Purchaser.....

(9) Reprint and impose a reasonable charge for the sale of reprints of Title 24.1 of the Code of Virginia or portions thereof, precinct lists, copies of lists of names of persons voting at general elections, statements of election results by precinct, and any other items required of the Board by law. Receipts from such sales shall be credited to the State Board of Elections for reimbursement of printing expenses.

(10) Furnish to candidates, elected officials or political party chairmen and to no one else on request, at reasonable cost, lists of those who voted at any primary or general election held in the two preceding years. Any person receiving such lists shall take and subscribe to the oath set forth in paragraph (8) of this section. (1970, c. 462; 1971, Ex. Sess., c. 119; 1972, c. 620; 1973, c. 30; 1974, cc. 369, 428; 1975, c. 515; 1976, c. 616; 1978, c. 778; 1983, c. 348.)

§ 24.1-31. Compensation and expenses of members.— Each member of the electoral board shall receive an annual compensation for his services a sum in accordance with the compensation plan set forth in the general appropriations act.

The counties and cities shall furnish the necessary postage and stationery, including a bound book for the minutes of its proceedings, for the use of the board.

Each member of the electoral board shall receive from the county or city, respectively, the same mileage as is now paid to members of the General Assembly.

Each member of the electoral board, including the secretary, shall receive the compensation set forth in the general appropriations act and, before he is entitled to receive any other amount in accordance with the expense plan set forth in the general appropriations act, shall make out a statement under oath of his claim for mileage and expenses, and the statements, when so made out and found correct, shall be paid by the governing body of the county or city for which the board was appointed and for which the service was rendered or expense incurred. Each governing body shall be reimbursed annually for such sums from the state treasury to the extent of (i) such compensation, (ii) not more than \$300 for costs incurred in the conduct of the electoral process, including expenses of the secretary of the electoral board, and (iii) mileage paid to members of the electoral boards, all to the extent as may be appropriated by law.

The governing body of any county or city may determine and pay to the secretary of the electoral board such additional allowance for expenses as it deems appropriate, and may determine and pay to the full-time secretary of the electoral board such additional compensation as they deem necessary, which additional expenses and compensation shall not be reimbursed from the state treasury. (Code 1950, §§ 24-37, 24-38, 24-40, 24-41; 1952, c. 540; 1956, c. 658; 1958, c. 42; 1964, c. 515; 1966, c. 714; 1970, c. 462;

1972, c. 620; 1974, c. 428; 1978, c. 778; 1981, c. 425; 1982, c. 650.)

§ 24.1-34. Board may remove general registrar or officers of election; filling vacancy in office of general registrar.—The board may remove from office any general registrar or officer of election upon notice, who fails to discharge the duties of his office according to law.

The electoral boards shall have the power, and it shall be their duty to declare vacant, and to proceed to fill the office of any general registrar in their respective cities and counties if he fails to qualify and deliver to the secretary of the board the official oath of the appointee in the usual form within thirty days after he has been notified of his appointment which notification shall be promptly given by the secretary. (Code 1950, §§ 24-35, 24-36; 1970, c. 462; 1984, c. 480.)